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Written statement** submitted by the International Movement Against All Forms of Discrimination and Racism (IMADR), non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Freedom of Expression in Sri Lanka (January 2015-Present)[1]

During the conflict in Sri Lanka human rights defenders' freedom of expression was subject to systematic interferences by the Government, resulting in widespread violations, including numerous enforced disappearances. The new Government, which came into power in January 2015, has pledged to address these issues.[2]

To date, certain progress has been made. A number of exiled journalists have been invited to return (however one was then arrested on return[3]), banned websites have been unblocked and travel bans have been lifted.[4] However, previous violations have not been addressed. Sri Lanka retains an embedded culture of impunity, the effects of which are particularly prominent in the Tamil-majority North and East of the country.[5] This persistent impunity, together with a pervasive military presence contributes to a pronounced chilling effect.

Since January 2015 various forms of low-level harassment and intimidation have persisted despite the relative decrease in killings and disappearances. Although the methods differ from those previously adopted, these actions continue to have a chilling effect that is designed to restrict unfavorable reporting and prevent transparency. As such they interfere with the right to freedom of expression. These issues are compounded by the current legislative framework which provides justification for systematic interference with freedom of expression.[6]

New trends in suppression of freedom of expression

The right to freedom of expression has been subjected to longstanding interference in Sri Lanka.

While white van abductions, disappearances, and arbitrary detentions were the principal methods utilized to suppress freedom of expression in the past,[7] these have been supplanted to some extent by different forms of harassment. Under the current Government journalists have been physically attacked, including attempted knife attacks.[8] They have been stopped from reporting, summoned for questioning without translators, and arrested and detained.[9] Human rights defenders have been further restricted from having contact with national and international media.[10] The targeting of media personnel now includes individuals such as newspaper and leaflet distributors.[11] These measures contribute to the

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[1] The Human Rights Centre Clinic at the University of Essex undertook research and analysis in preparation of this submission. The Sri Lanka Campaign for Peace and Justice assisted with the editorial process. The International Movement Against All Forms of Discrimination and Racism (IMADR) has made the submission.

[2] Human Rights Council, Resolution '*Promoting reconciliation, accountability and human rights in Sri Lanka*' (September 2015) A/HRC/30/L.29, para. 6

[3] JDS Lanka, *Exiled Tami journalist arrested in Sri Lanka,* (2015 January). Retrieved from http://www.jdslanka.org/index.php/news-features/media/583-tamil-journalist-in-exile-arrested-on-arrival-in-sri-lanka [accessed 1 February 2016]

[4] Foreign and Commonwealth Office, United Kingdom, '*Corporate Report Sri Lanka - in-year*' (2015, July). Retrieved from https://www.gov.uk/government/publications/sri-lanka-in-year-update-july-2015/sri-lanka-in-year-update-july-2015 [accessed 1 February 2016]https://www.gov.uk/government/publications/sri-lanka-in-year-update-july-2015/sri-lanka-in-year-update-july-2015

[5] Ibid, above note 1; Sri Lanka Campaign, '*The OHCHR investigation on Sri Lanka: A Media Guide*' (2015, September), pp. 7

[6] Kishali Pinto-Jayawardena, '*Sri Lanka politics, law and the media: Ghosts of governments past*', Column Sri Lanka Guardian (2015, November 13). Retrieved from http://www.slguardian.org/2015/11/sri-lanka-politics-law-and-the-media-ghosts-of-governments-past/ [accessed 1 February 2016]http://www.slguardian.org/2015/11/sri-lanka-politics-law-and-the-media-ghosts-of-governments-past/

[7] According to sources, white-van abductions are still taking place. '*North CM claims white van abductions continued.*' (2015, December 10). Retrieved from http://colombogazette.com/2015/12/10/north-cm-claims-white-van-abductions-continued/ [accessed 1 February 2016]; International Truth and Justice Project Sri Lanka, '*Silenced: survivors of torture and sexual violence in 2011*', January 2016, pp. 11

[8] '*SRI LANKA: A call for prompt investigations into threats to lives of three journalists in Jaffna.*' (2015, April 2014). Retrieved from http://www.lankasocialistsforum.org/?p=159 [accessed 1 February 2016]

[9] INFORM, '*Report: Repression of Dissent in Sri Lanka*', July - September 2015

[10] Ibid, June 2015, pp. 3

[11] Ibid, January - April 2015, pp. 3

creation of an atmosphere of fear and intimidation resulting in a chilling effect that hinders media workers' right to freedom of expression.

Failure to investigate past violations

The new Government, despite its promises, has failed to investigate violations perpetrated by the former regime, including those which targeted journalists and involved cases of disappearances.[12] This violates the State's obligation to promptly investigate attacks.[13]

Thus impunity continues under the current Government. In a high profile incident in May 2015, a social worker and human rights defender was murdered.[14] To-date, this incident has not been investigated, sending a clear message to human rights defenders. Ongoing measures of intimidation, coupled with impunity and ostensible Government acquiescence, create an environment of fear and a chilling atmosphere.

Pending law reforms

The main legal basis used by the Government to justify systematic interference with freedom of expression has been the 1978 Prevention of Terrorism Act (PTA) which allows police 'to search, arrest and detain'[15] individuals without warrant, for a period up to 18 months.[16] These overly broad powers do not meet the requirements of the admissible restrictions of the International Covenant on Civil and Political Rights (ICCPR).[17] Restrictions should be narrow and are only admissible when they are provided by law, have a legitimate aim such as public order, and are both necessary and proportionate.

A number of proposed legislative measures develop the PTA and address freedom of expression. A proposed Right to Information Bill has the potential to start a new era for the media by providing an independent information commission that includes civil society and media representatives. However, despite long-term negotiations in 2015, the Government has so far been reluctant to adopt the Bill.[18]

Other elements of proposed legislation contained controversial elements. A prominent example was the proposed Bill on hate speech – thankfully subsequently withdrawn. Tabled as an amendment to the Penal Code, the proposed definition of hate speech was similar to that in the PTA and would allow arbitrary arrest on that basis. Thus, the adoption of this law would have nullified the effect of the promised repeal of the PTA.[19]

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[12] On January 24th 2010 Sri Lankan journalist and cartoonist Prageeth Eknaligoda went missing. Before his 'disappearance', Prageeth wrote a comparison of the two candidates, coming out in favor of the opposition. Amnesty International is concerned that he may have been taken because he criticised the government. Amnesty International, Youth Group Action, '*Campaign: Who is at Risk / Where is Prageeth?*' (2013, September). Retrieved from http://www.amnesty.org.uk/sites/default/files/prageeth-final_0.pdf [accessed 1 February 2016]

[13] Human Rights Council, General Comment No. 34: Art. 19: Freedom of opinion and expression, para. 45

[14] The victim was a leading social activist, who had confronted the previous administration of the Murukan temple, where corruption prevailed with the backing of civil administrative officers appointed by the occupying Sri Lankan State. '*Mathisayan's killing evokes fear among social activists in Batticaloa.*' (2015, June 02). Retrieved from http://thamizharsenai.blogspot.co.uk/2015_06_01_archive.htmlhttp://thamizharsenai.blogspot.co.uk/2015_06_01_archive.html [accessed 1 February 2016]http://thamizharsenai.blogspot.co.uk/2015_06_01_archive.html

[15] Parliament of the Democratic Socialist Republic of Sri Lanka, '*Prevention of Terrorism (Temporary Provisions) Act No. 48*' of 1979, art. 6

[16] Home Office, Government of United Kingdom, '*Country Information and Guidance, Sri Lanka: Journalists, media professionals and human rights activists*', September 2015, pp. 18

[17] Human Rights Council, General Comment No. 34: Art. 19: Freedom of opinion and expression, para. 26; Human Rights Watch Report, '*Human Rights Accountability in Sri Lanka*' (1992), pp. 39

[18] '*Sri Lanka: Right to Information law must be submitted.*' (2015, December 14). Retrieved from https://www.article19.org/resources.php/resource/38220/en/sri-lanka:-right-to-information-law-must-be-adopted [accessed 1 February 2016]https://www.article19.org/resources.php/resource/38220/en/sri-lanka:-right-to-information-law-must-be-adopted

[19] Human Rights Commission of Sri Lanka, Letter to Prime Minister of Sri Lanka, '*Proposed Amendment to the Penal Code on Hate Speech*' (2015, December 15)

In July 2015 the government announced the revival of the Press Council,[20] an institution that has in the past been used to sanction journalists and prohibit the publication of "false" information about the government.[21] Thus, like several previous administrations, the new Government could use the Council as a tool to coerce media.

Non-compliance with international standards

As a signatory of the ICCPR Sri Lanka has the obligation to respect and protect freedom of expression.[22] A free press is essential to ensure the proper functioning of democratic society by providing information of public interest and performing the vital role of a 'public watchdog'.[23] Journalists play an essential role in ensuring realization of the principles of transparency and accountability which are, in turn, essential for the promotion of human rights.[24] Thus, Sri Lanka as a State Party should encourage and create the enabling environment for an independent media across the ethnic spectrum.[25] The harassment of journalists interferes with the right to freedom of expression.

Recommendations

The new Government promised change and the promotion of human rights. However, although the methods used to target journalists and suppress expression have changed, the effects remain the same. Widespread intimidation and harassment, coupled with impunity for historical and contemporary violations, contribute to a pronounced chilling effect, hindering journalists' right to freedom of expression.

In light of above, the Sri Lankan Government is urged:

- To repeal the PTA and halt the revival of the Press Council;
- To adopt the Right to Information Bill;

The Sri Lanka Campaign for Peace and Justice, an NGO without consultative status, also shares the views expressed in this statement.

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[20] The Sri Lanka Press Council Act No.5 (1973)
[21] Ibid, art. 16.5
[22] UN General Assembly, '*International Covenant on Civil and Political Rights*', 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171., art. 19 Retrieved from: http://www.refworld.org/docid/3ae6b3aa0.html [accessed 5 February 2016]
[23] *Pedersen and Baadsgaard v Denmark*, ECHR, 2004, para. 71
[24] Human Rights Council, General Comment No. 34: Art. 19: Freedom of opinion and expression, para. 3
[25] Ibid., paras. 13 - 14